

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941 BB-ACE

RIO CHAMA STREAM SYSTEM
Section 7: Rito de Tierra Amarilla

Subfile Nos. CHTA-001-0001
CHTA-001-0002
CHTA-001-0003
CHTA-002-0001
CHTA-002-0002
CHTA-002-0003
CHTA-003-0001

STATEMENT OF ISSUES

The Plaintiff State of New Mexico, *ex rel.* State Engineer (State), files this Statement of Issues pursuant to the Scheduling Order filed December 15, 2005 (Doc. No. 8103). Under the December 15, 2005 Scheduling Order the State is required to file and serve on Defendants “a brief summary of the State’s position on the issues relevant to the disputed subfiles listed above.” In preparing this summary the State does not intend to limit the issues it might raise with respect to the claims of the Defendants or the disputed subfiles listed above, nor does the State intend that this summary serve as the equivalent of a Pretrial Order pursuant to Fed. R. Civ. Pro. 16(e).

The State’s position with respect to the subfiles listed above is that there is insufficient evidence to conclude that the areas were irrigated prior to March 19, 1907. Except for water rights acquired by March 19, 1907, any right to use surface waters for irrigation purposes must originate by application to the State Engineer as provided by statute. There are no approved permits for the use

of surface water in connection with the above disputed subfiles or lands.

The State has retained the services of an historian, Dr. John O. Baxter, to conduct a study of the settlement and occupation of the Tierra Amarilla land grant. Dr. Baxter completed his report on this subject in December 2001. The report describes how Thomas B. Catron sold the Tierra Amarilla land grant to the Chama Land Company in the spring of 1909. The terms of the agreement exempted 14,515 acres from the sale including occupied lands at Tierra Amarilla, Los Brazos, Ensenada, Parkview, Cañones and elsewhere. Collectively, these lands became known as the "Catron Exclusions." Subsequently, on November 12, 1912, the original buyers resold the grant to another consortium, the Arlington Land Company. Almost immediately, this company subdivided the grant and began to sell tracts of 1,000 to 30,000 acres to individual buyers.

During the years Catron attempted to sell the grant, the area above Tierra Amarilla, where the disputed subfiles are located, was never segregated as part of the Catron Exclusions. This suggests that no one claimed the lands for agricultural purposes. The selling price charged by the Arlington Land Company for land in this area, \$2.10 per acre, was exactly the same as the valuation placed on grazing land for tax purposes during the period. Dr. Baxter concludes that irrigation use in the area above Tierra Amarilla probably did not begin until after it was sold by the Arlington Land Company to private buyers beginning in 1913.

Some property owners in the valley above Tierra Amarilla have offered a different interpretation of the original settlement than the one described by Dr. Baxter. After conducting research concerning *hijuelas* provided to original settlers at Las Nutritas (now Tierra Amarilla) by Francisco Martinez, they have concluded that the parcels allocated to Juan Pablo Valdez, Juan Pablo Martín, Juan Antonio Ulibarri and their neighbors were located some distance upstream from the

original plaza and included lands now mapped under the above disputed subfiles. Dr. Baxter disagrees with this assessment, and believes that all of the lands associated with these *hijuelas* are located within the boundaries of Tract H (Tierra Amarilla) of the Catron Exclusions.

Based on aerial photos of the area above Tierra Amarilla, the State also believes that the level of surface water irrigation may have significantly increased over time, that is, since the first aerial photos were taken of this area in 1936.

Dated: February 28, 2005.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Statement of Issues was mailed to following this 28th day of February 2006:

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and transmitted by ACE filing to the following this 28th day of February 2006:

Special Master Vickie L. Gabin
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/s/ Ed Newville
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